LIBRARY
UPREME COURT. U. S.

Office-Supreme Court, U.S.
FILED
NOV 6 1969

IN THE

# Supreme Court of the United States

October Term, 1969
No. 634

JOHN FREDERICK WEERSING,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

## Petitioner's Reply to Brief for the United States in Opposition.

DAVID B. FINKEL and
HUGH R. MANES,
3440 Wilshire Boulevard,
Los Angeles, Calif. 90005,
*Attorneys for Petitioner.*

Parker & Son, Inc., Law Printers, Los Angeles. Phone 685-9790

IN THE

# Supreme Court of the United States

October Term, 1969
No. 634

JOHN FREDERICK WEERSING,

*Petitioner,*

*vs.*

UNITED STATES OF AMERICA.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.**

## Petitioner's Reply to Brief for the United States in Opposition.

### Statement.

The Solicitor General suggests in his Brief for the United States in Opposition at pp. 1, 3, that the Petition for Writ of Certiorari is untimely because filed on September 23, 1969, one day after the date on which it was due by virtue of the extension of time granted by Mr. Justice Douglas.

The Petition for Writ of Certiorari was printed and sent off to the Court by Parker & Son, Inc., located at 611 West Sixth Street, Los Angeles, California. To the knowledge of undersigned, this firm has had many years of experience in printing, serving and filing, or causing to be filed; petitions for writs of certiorari, briefs, and other documents with the United States

Supreme Court; and undersigned counsel have used this firm on several occasions in the past.

Upon receipt of the Solicitor General's Brief in Opposition, undersigned counsel requested Parker & Sons to investigate the matter and to furnish documents relating to the delivery of the petitions to the Clerk of the Court.

Petitioner has since been advised with respect thereto as follows:

Parker & Son airmailed on Friday, September 19, 1969, the three copies of said Petition served on respondent United States. According to the acknowledgement of service filed by the Solicitor General, said three copies were received by him, at the Department of Justice in Washington, on Monday, September 22, 1969, the date when the Petitions were due.

The Petitions to be filed with the Court were sent to the Clerk of the United States Supreme Court by air freight via Airland Freight Consolidators, Inc., at 7:30 P.M. on September 19, 1969. A copy of the shipper's receipt, reflecting the foregoing, is appended hereto as Exhibit "A", and by this reference, is incorporated herein and made a part hereof.

In a letter signed by a Mr. Oland Davis, Jr., Manager of said Airland Freight Consolidators, Inc., (a copy of which is appended hereto as Exhibit "B", and by reference incorporated herein and made a part hereof), said Petitions were shipped by air the same evening, and arrived "in DCA on SATURDAY MORNING, SEPTEMBER 20, 1969, APPROXIMATELY 0900 (i.e., 9:00 A.M.)." Mr. Davis then explains:

> "Our agent in Washington, D.C. was not aware that deliveries could be made to the Supreme Court before noon on Saturdays. He held this freight for a Monday regular delivery."

Mr. Davis further states that the driver routed the Petitions "for a late Monday evening delivery, as there were no markings to indicate on the Air-Land Freight bill that this was a rush shipment."

Apparently when the driver attempted delivery, "the clerk was not in so he attempted to deliver to the gate guard" who, of course, refused to accept it.

The driver then delivered the package at 10:00 A.M. the following morning, September 23, 1969.

After an ebullient, if fatuous, commercial, Mr. Davis concludes his letter with the following comment:

> "I have made arrangements with our people in DCA to deliver freight to the Supreme Court Building before noon on Saturdays, and I am quite confident this oversight will not re-occur."

Setting aside the brighter prospects for future customers of Airland Freight Consolidators, Inc., it would appear that but for the naivete, ignorance and negligence of that company, petitioner's application for Writ of Certiorari would have been received by the Clerk two days before due, or at least by the due date.

Undersigned counsel expressly advised Parker & Son of the due date, and were assured by that firm that the petitions would be prepared and sent to the Court for filing on, if not before the due date. Out of an abundance of caution, undersigned counsel verified the shipment of the petitions with Parker the evening of

September 19, and, with such assurances, petitioner's counsel assumed that the Petitions would be delivered to the Court in ample time. Undersigned counsel were, of course, totally unaware that Airland was treating the shipment in the cavalier fashion described in its letter (Exhibit "B").

It may be further noted that, pursuant to petitioner's request, the certified record was lodged with the Clerk of the Court on or about September 3, 1969—long prior to the date on which the Petition was due.

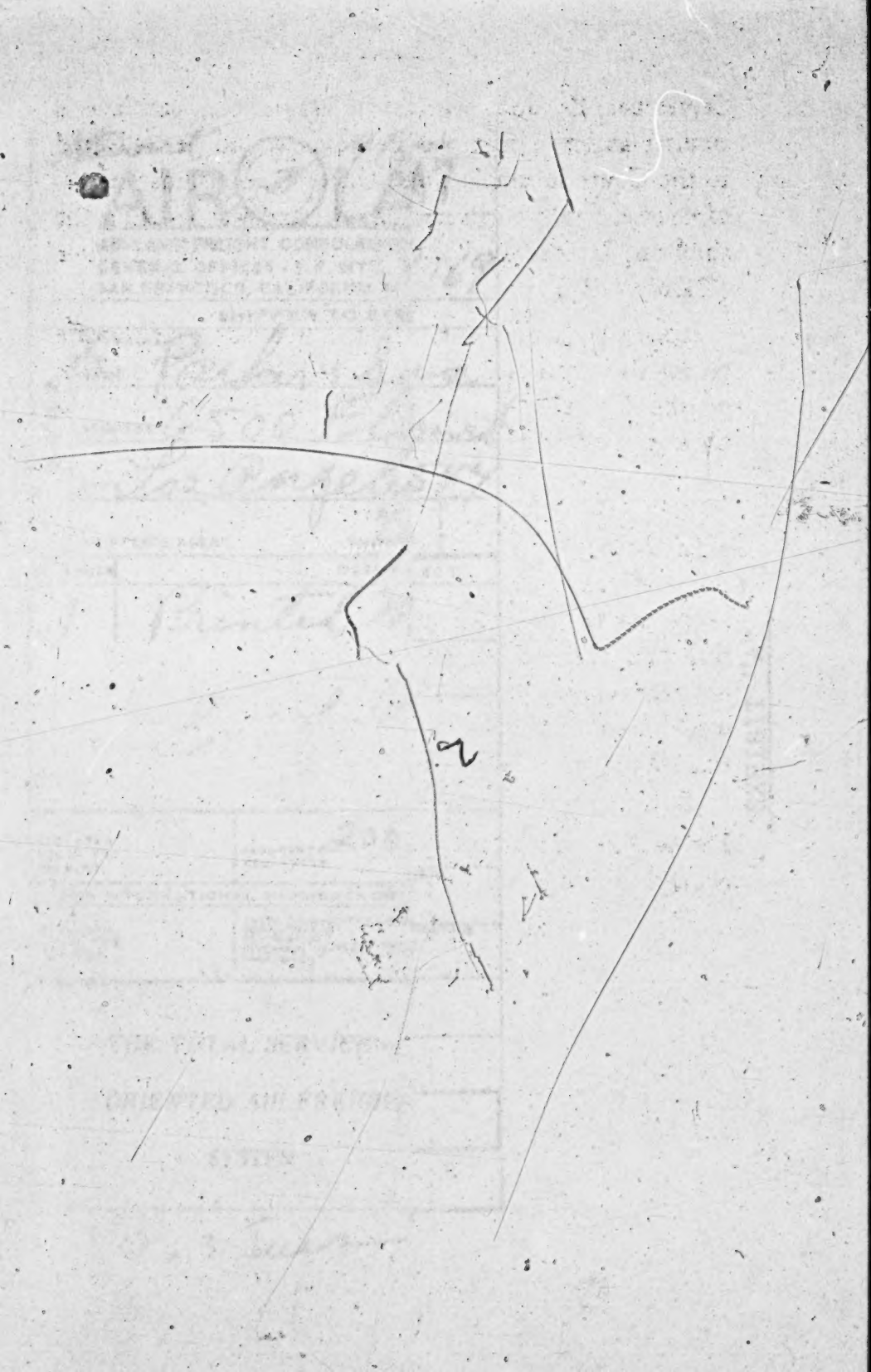
**Conclusion.**

In view of the receipt and docketing of the Petitions on the morning following the due date, and because the untimely filing was beyond petitioner's control, and does not appear to have prejudiced the government or parties concerned, the interests of justice would seem to require that the Petition be deemed filed timely, and that the Petition be considered on its merits.

Accordingly, it is respectfully submitted that the Petition for Writ of Certiorari should be deemed timely filed, and should be granted.

Respectfully submitted,

DAVID B. FINKEL and
HUGH R. MANES,
*Attorneys for Petitioner.*



Stewart 4/6 98

# AIR LAND

AIR-LAND FREIGHT CONSOLIDATORS, INC.
GENERAL OFFICES - S. F. INT'L. AIRPORT
SAN FRANCISCO, CALIFORNIA 94128

It is mutually agreed that the goods herein described are accepted in apparent good order (except as noted) for transportation as specified herein, subject to governing classifications and tariffs in effect as of the date hereof which are filed in accordance with law. Said classifications and tariffs, copies of which are available for inspection by the parties hereto, are hereby incorporated into and made part of this contract. It is also mutually agreed, that for the purpose of international shipments and in the absence of specific written instructions, this air bill shall also serve as a shipper's letter of instructions.

**NOT NEGOTIABLE**

| ORIGIN | AIR BILL NUMBER |
|---|---|
| | 103147 |

| DEST. | VIA | DATE |
|---|---|---|
| | | 9/19/69 |

**SHIPPER TO COMPLETE ALL INFORMATION ABOVE BOLD LINE AND SHIPPER'S C.O.D.**

FROM

X PREPAID

NAME Parker & Son, Inc -

ADDRESS 6500 Flotilla St -

CITY Los Angeles, Ca 90022

SHIPPER'S AGENT 4051 SHIPPER'S NO.

TO

COLLECT

NAME Hon John F. Davis

ADDRESS Clerk U.S. Supreme Court.

CITY Washington, D.C 20544

ALSO NOTIFY

| NO. PIECES | DESCRIPTION AND MARKS | WEIGHT | COMMODITY CODE | SCALE NO. / GROUP NO. |
|---|---|---|---|---|
| 1 | Printed Matter-Briefs | 9 | | |

| PREPAID | COLLECT |
|---|---|
| AIR FREIGHT | |
| PICK-UP | |
| DELIVERY | |
| EXCESS VALUE CED | |
| INSURANCE | |
| CHARGES ADVANCED - ORIGIN | |
| CHARGES ADVANCED - DESTINATION | |
| OTHER CHARGES | |
| C.O.D. FEE | |
| SHIPPER'S C.O.D. → | |
| TOTAL CHARGES | |

DECLARED VALUE FOR CARRIAGE

INSURANCE REQUESTED 200.00

FOR INTERNATIONAL SHIPMENTS ONLY:

DECLARED VALUE FOR CUSTOMS

THESE COMMODITIES LICENSED BY U.S. FOR ULTIMATE DESTINATION _____ DIVERSION CONTRARY TO U.S. LAW PROHIBITED

SPECIAL INSTRUCTIONS

SPECIAL PICK UP ☐ AUTHORIZED BY: _____

SPECIAL DELIVERY ☐

OTHER CHARGES (SPECIFY)

| LENGTH | | WIDTH | | DEPTH | | CU. IN. | DIM WEIGHT |
|---|---|---|---|---|---|---|---|
| | X | | X | | = | | |

REC'D BY AIR-LAND FREIGHT AT:

SHIPPER'S DOOR ☐ AIRPORT ☐

DATE 9/19/69 TIME 1930

SIGNATURE Terry Schiavo

*THE TOTAL SERVICE — ORIENTED AIR FREIGHT SYSTEM*

2:3 Tues?

I. SHIPPER'S RECEIPT

5761 West 98th Street / Los Angeles, Ca. 90045 / Telephone (213) 776-5

AIR-LAND
FREIGHT CONSOLIDATORS INC

30 October 1969

Mr. Robert M. Parker, Vice President
Parker & Son
6500 Flotilla
City of Commerce, California 90022

Dear Mr. Parker,

On Friday September 19, 1969, we shipped one package weighing 10 pounds of printed matter to Washington, D.C. on our Air-Land airbill number 103147, consigned to the Honorable John F. Davis.

This freight arrived in DCA on Saturday morning, September 20, 1969 approximately 0900. Our agent in Washington, D.C. was not aware that deliveries could be made to the Supreme Court before noon on Saturdays. He held this freight for a Monday regular delivery. His driver had this freight routed for a late Monday evening delivery, as there were no markings to indicate on the Air-Land Freight bill that this was a rush shipment. When he attempted delivery the clerk was not in so he attempted to deliver to the gate guard. The guard would not accept the freight. It was then delivered the next day at 10:00 a.m.

We have initiated a unique form of monitoring service here at Air-Land. This service is known as "Intensive Care" and provides you with a complete monitor of your freight from pick-up at shippers door, flight booking, in-flight monitoring and delivery, another of the new and exciting programs Air-Land has introduced through-out our system.

In the future when you have a rush shipment, please indicate in the special instruction space located at the bottom center of our Air-Land airbills.

I have made arrangements with our people in DCA to deliver freight to the Supreme Court Building before noon on Saturdays and I am quite confident that this oversight will not re-occur.

Sincerely,

Oland Davis, Jr.
Manager, Intensive Care
Air-Land Freight

OD/mb

EXHIBIT "B"